

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

Brandon William Jones,	)	Case No. 0:19-cv-00022-DCC
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER</b>
	)	
	)	
Michelle Fox,	)	
	)	
Defendant.	)	
	)	

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This matter is before the Court upon Plaintiff's complaint alleging violations of his civil rights pursuant to 42 U.S.C. § 1983. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation ("Report"). Defendant filed a motion for summary judgment on July 15, 2019. ECF No. 30. On July 16, 2019, this Court issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir.1975), advising Plaintiff of the summary judgment/dismissal procedure and the possible consequences if he failed to respond adequately. ECF No. 31. On August 13, 2019, Plaintiff filed a motion to dismiss and a response to the motion for summary judgment. ECF No. 34. On August 14, 2019, Defendant's counsel filed a letter stating that Defendant did not oppose Plaintiff's motion and requesting that the case be dismissed with prejudice. On September 19, 2019, the Magistrate Judge issued a Report recommending that Plaintiff's motion be granted

subject to certain conditions and that the action be dismissed without prejudice. ECF No. 39. The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Report and the serious consequences for failing to do so. Neither party filed objections to the Report, and the time to do so has lapsed.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

As stated above, neither party has objected to the Magistrate Judge's Report. Accordingly, after considering the record in this case, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error and agrees with the recommendation of the Magistrate Judge. Plaintiff's motion to dismiss is **GRANTED** subject to the following conditions: (1) if Plaintiff files an action based on or including the

same claims against the same Defendant in the future, the Defendant may seek his costs from this action pursuant to Rule 41(d) of the Federal Rules of Civil Procedure; and (2) any discovery materials or other evidence obtained during the course of the litigation of this matter may also be used in any subsequent matter. See *Davis v. USX Corp.*, 819 F.2d 1270, 1276 (4th Cir. 1987). This dismissal is without prejudice.<sup>1</sup>

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.  
United States District Judge

October 8, 2019  
Spartanburg, South Carolina

#### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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<sup>1</sup> Defendant's motion for summary judgment [30] is **FOUND as MOOT**.